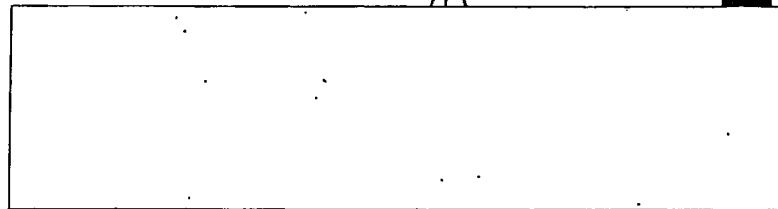


FOIA LITIGATION

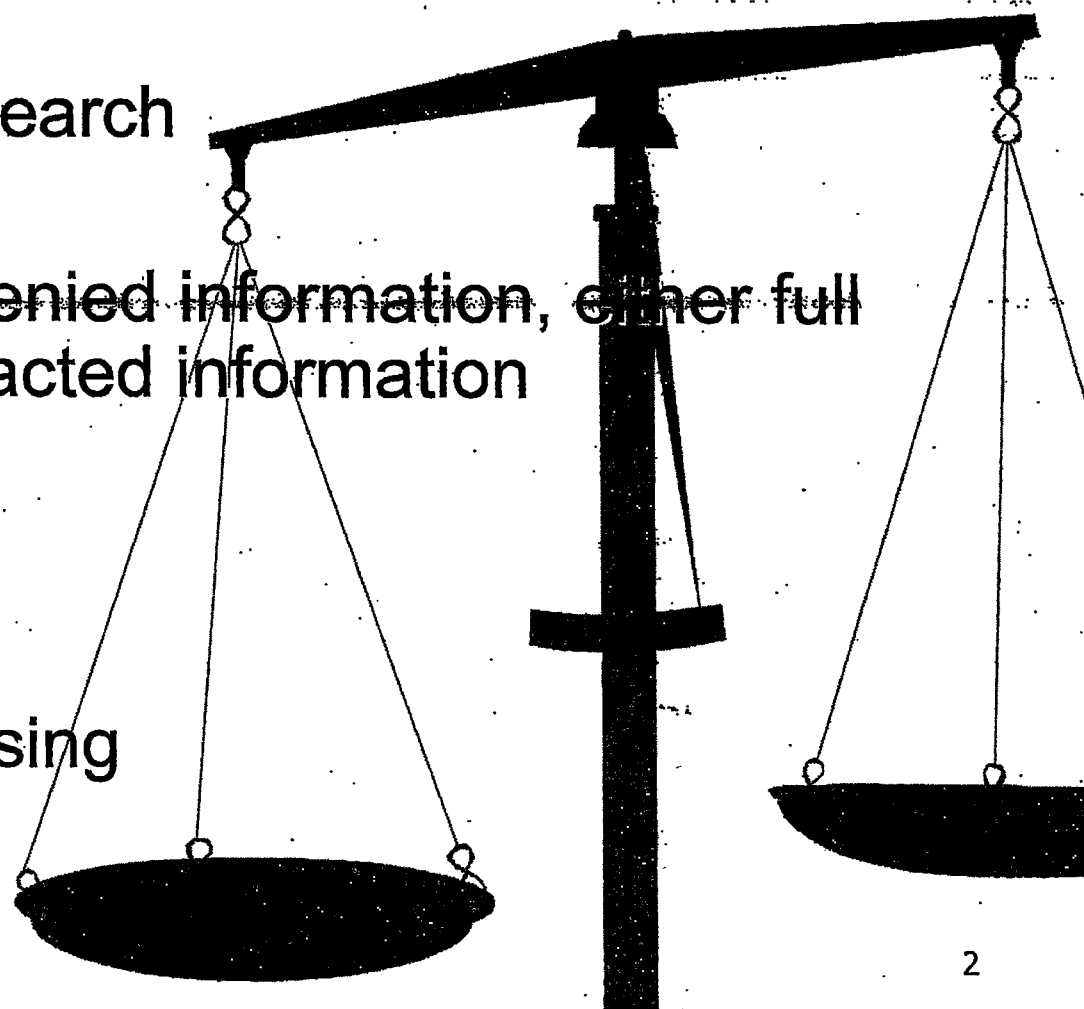


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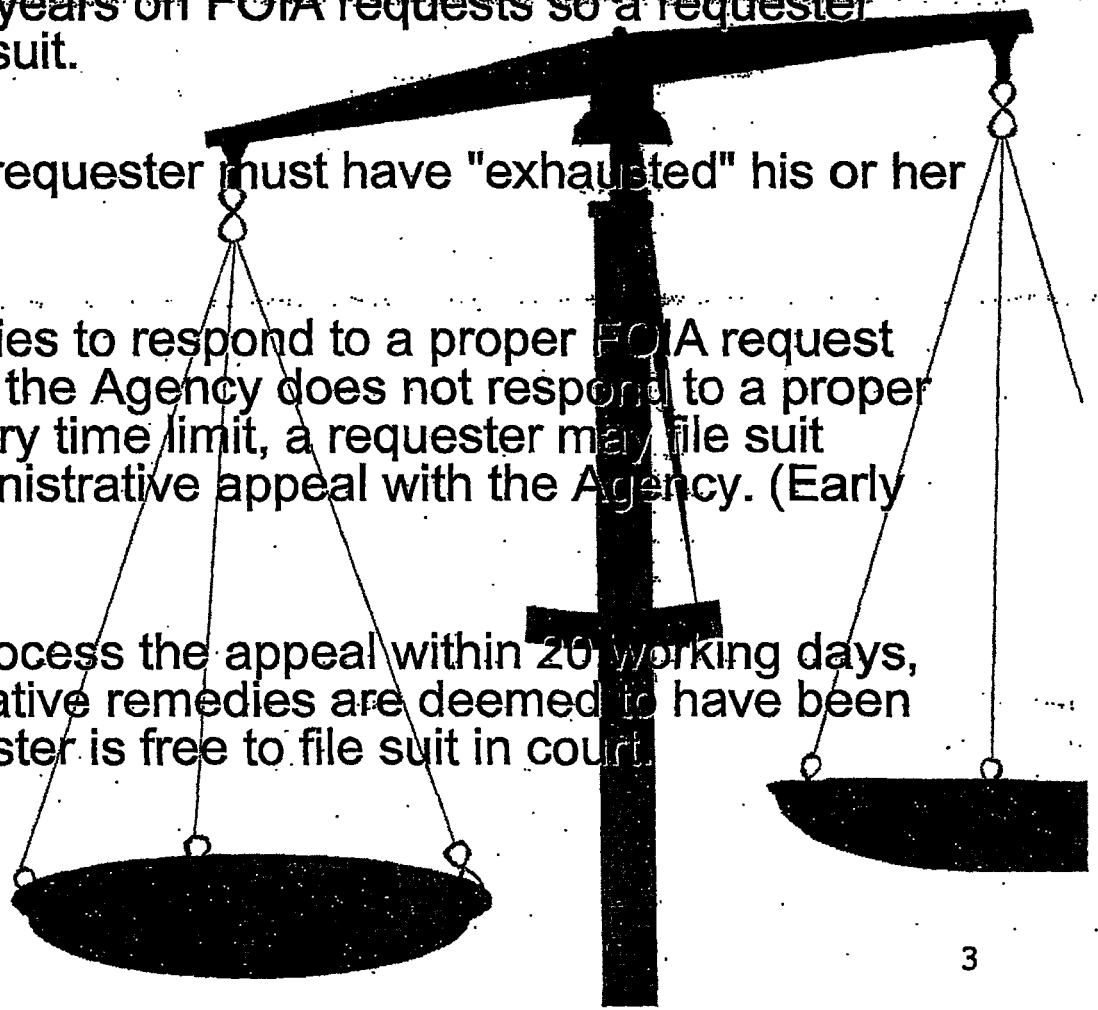
PRIMARY REASONS FOR LITIGATION

- Adequacy of the search
- Challenging the denied information, either full denials or the redacted information
- No Response
- Expedited Processing



FOIA LITIGATION

- Statute of limitation is six years on FOIA requests so a requester has six years to file a lawsuit.
- Before filing suit, a FOIA requester must have "exhausted" his or her administrative remedies.
- The FOIA requires agencies to respond to a proper FOIA request within 20 working days. If the Agency does not respond to a proper request within this statutory time limit, a requester may file suit without first filing an administrative appeal with the Agency. (Early Litigation)
- If the Agency does not process the appeal within 20 working days, the requester's administrative remedies are deemed to have been exhausted and the requester is free to file suit in court.



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INITIAL REVIEW

■ COMPLAINT RECEIVED

- From OGC or received directly by us.
- The Complaint is a document that sets forth the facts and issues of the case, as the FOIA requester views them.

■ CASE MANAGER ASSIGNED

- Usually the CM who processed the case or C/FOIA Branch will assign a CM

■ REVIEW COMPLAINT

- Determine which cases are involved in the litigation. Get files or if necessary, have them ordered from AARC.

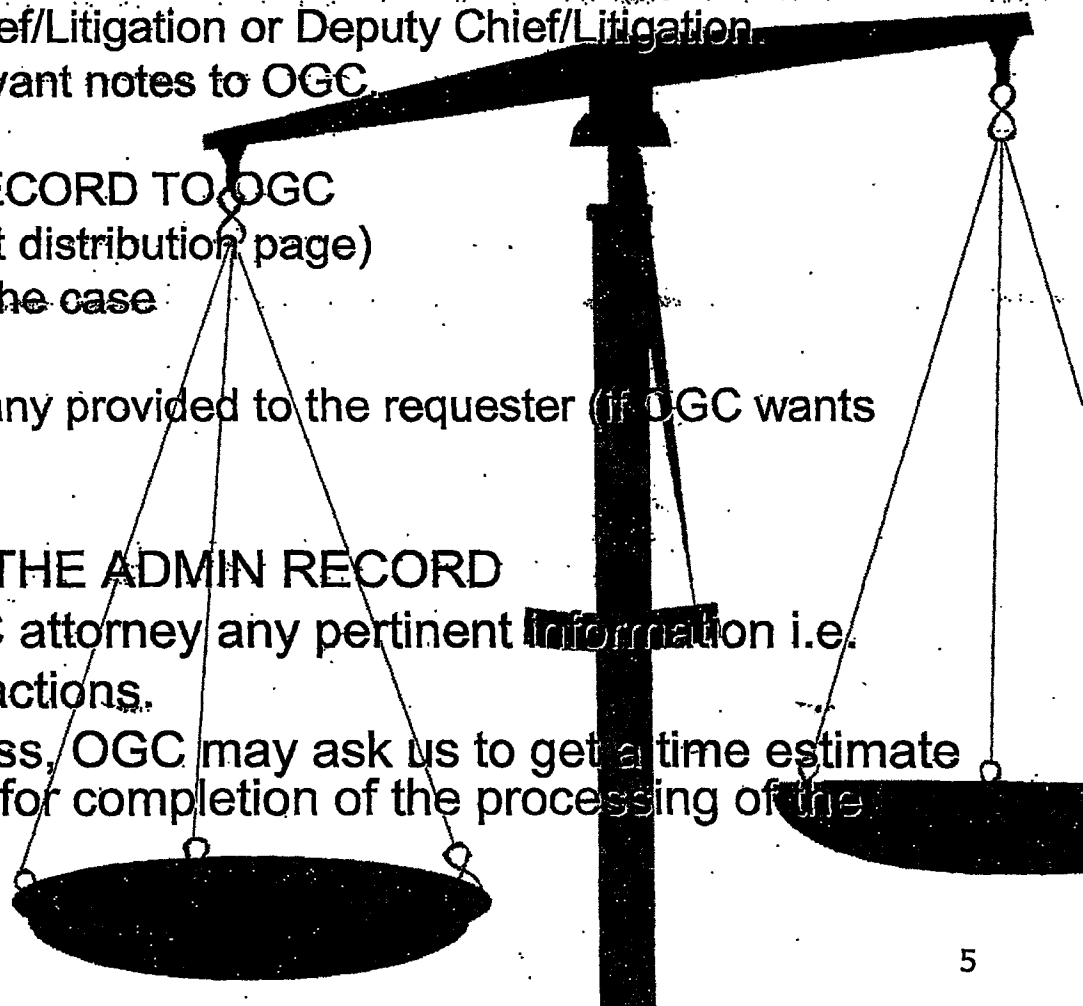
■ REVIEW CASES TO FAMILIARIZE YOURSELF WITH THEM.

- Look for other open cases on the same topic.
- Look to see whether documents have been released on the subject in other cases.
- Verify that initial (and appeal, if applicable) processing was done adequately.

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NOTIFY OGC/LD

- FIND OUT WHICH OGC ATTORNEY IS ASSIGNED TO THE CASE
 - Send a note to OGC, Chief/Litigation or Deputy Chief/Litigation.
 - cc CIO/Legal on any relevant notes to OGC.
- SEND COPY OF ADMIN RECORD TO OGC
 - Correspondence (without distribution page)
 - Lotus Notes discussing the case
 - Tasking Responses
 - Copies of documents if any provided to the requester (if OGC wants them)
- AFTER OGC REVIEWS THE ADMIN RECORD
 - Discuss with the OGC attorney any pertinent information i.e. taskings, deadlines, actions.
 - If case is still in process, OGC may ask us to get a time estimate from the components for completion of the processing of the case.



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OPEN AMERICA

- When a FOIA requester files suit before the Agency has completed its processing of the FOIA request, the Agency may request a "stay of proceedings" in order to complete the processing of the request.
- The FOIA permits the court to provide this "stay of proceedings" when "exceptional circumstances" exist, the Agency has been exercising "due diligence" in responding to the FOIA request, and the requester does not have an "exceptional need or urgency." This type of "stay of proceedings" is often referred to as an "Open America" stay, named for the case *Open America v. Watergate Special Prosecution Force*.
- If the court grants the stay, the Agency will have the additional time it needs to complete the administrative processing of the request. If the requester can show a compelling need or urgency for having his request processed out of turn, the court may deny the Agency's request for an *Open America* stay.

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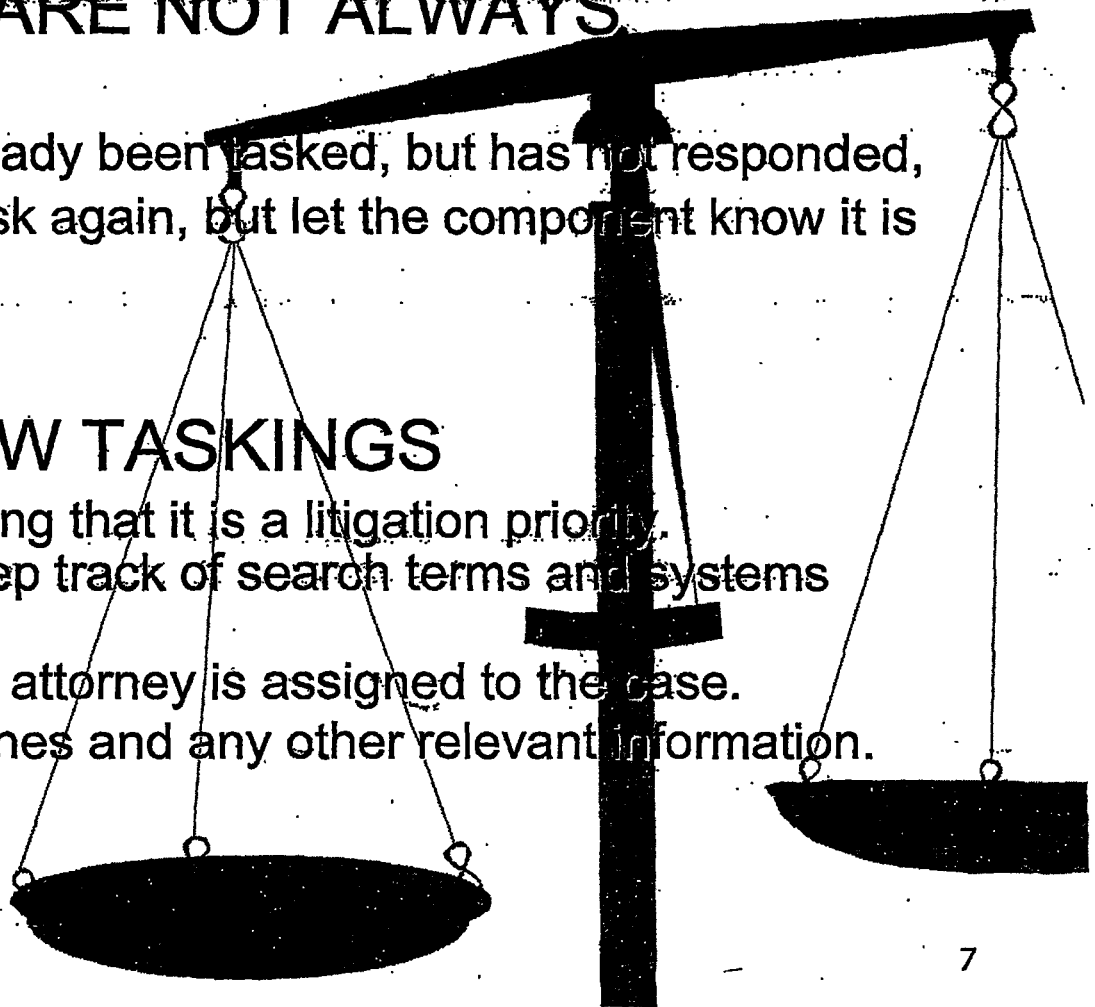
TASK AS REQUIRED

■ NEW TASKINGS ARE NOT ALWAYS REQUIRED

- If component has already been tasked, but has not responded, there is no need to task again, but let the component know it is now in litigation.

■ IF CREATING NEW TASKINGS

- Highlight in your tasking that it is a litigation priority.
- Tell component to keep track of search terms and systems searched.
- Tell them which OGC attorney is assigned to the case.
- Inform them of deadlines and any other relevant information.



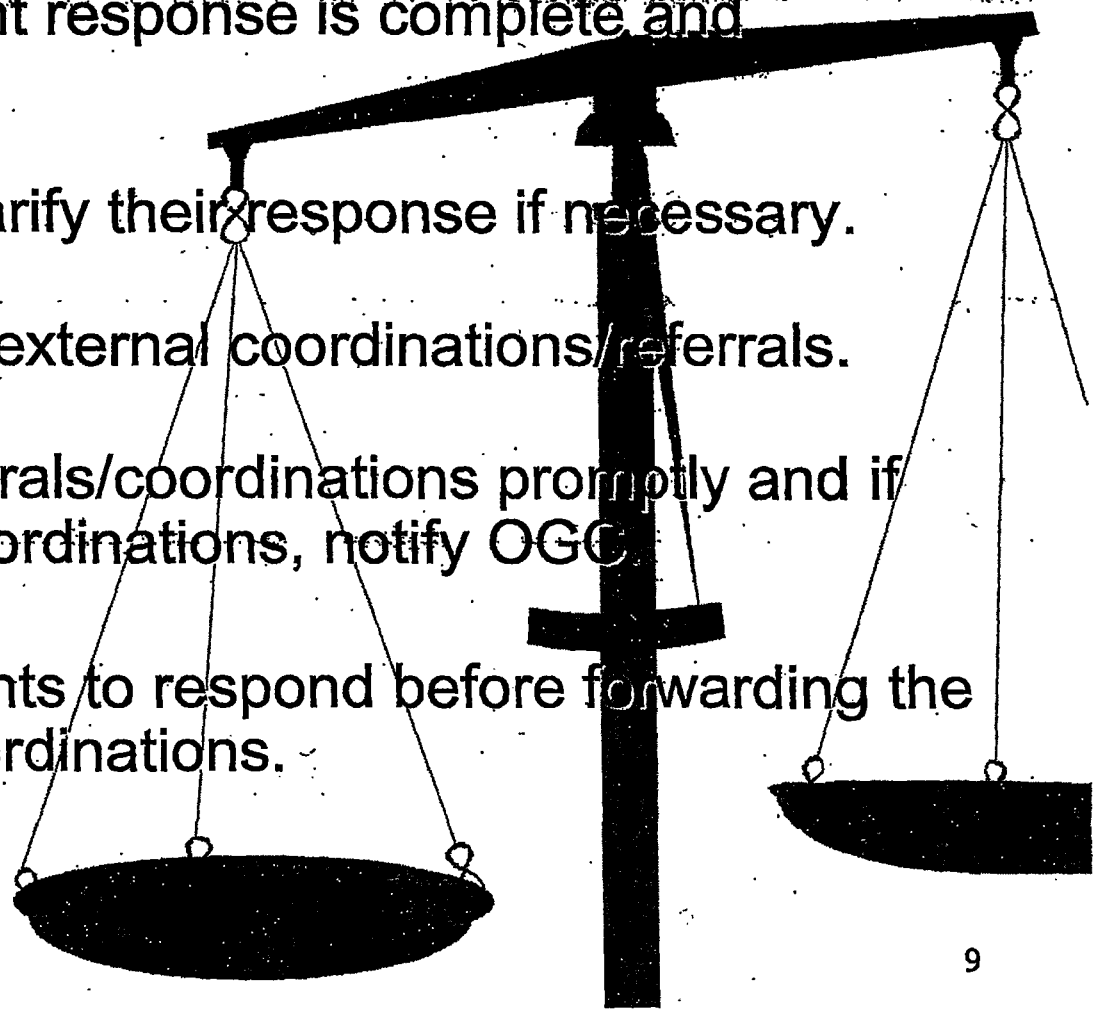
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CORRESPONDENCE		REFERRAL	
AIDIR TASKED	DADC	DIR TASKED	DC
DOC COUNT	1	CP	2
FEE CATEGORY	NONE <input checked="" type="checkbox"/>	CASE STATUS	OPEN
CASE OFFICER	<input checked="" type="checkbox"/>	PHONE	
IA	<input checked="" type="checkbox"/>	PHONE	
<input checked="" type="checkbox"/>			
INSTRUCTIONS	<p>Please be advised that this case is now the subject of an early litigation, 17-CV-0012, in response to a complaint filed in the United States District Court in the Southern District of New York. In the litigation, the plaintiff is seeking primarily the expedited processing and release of agency records requested (National Security Letters) from the defendant's Department of Defense and Central Intelligence Agency.</p> <p>Please note that since we are in litigation, PIPD will need both full-text and redacted copies of any documents scanned into MRP, or dummy coversheets that describe the subject, date of document, document identifier, exemptions, and reasons for denying document.</p> <p>Please include the following information in your response back to PIPD for litigation purposes:</p> <ul style="list-style-type: none"> A list of all search terms used to conduct any searches. Identify and list all the report systems (databases) searched in response to this litigation, including FOIA and PA systems when necessary. Provide comments or reasons on items deemed unsearchable within your comments. When annotating documents for release, please cite all applicable exemptions. Include an explanation of all reasons for deletions made in each document that you determine is exempt from release (i.e., denied). Examples would include names, organizational data, sources and methods, personal privacy, deliberative privilege, law enforcement records, foreign liaison, cover facility, etc. Please advise if further coordination or referral is necessary (including internal and external). If you have any questions regarding this litigation case, please contact XXX on [redacted]. 		

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TASKING RESPONSES

- Make sure component response is complete and accurate.
- Ask component to clarify their response if necessary.
- Check for internal or external coordinations/referrals.
- Task all internal referrals/coordinations promptly and if there are external coordinations, notify OGC.
- Wait for all components to respond before forwarding the external referrals/coordinations.

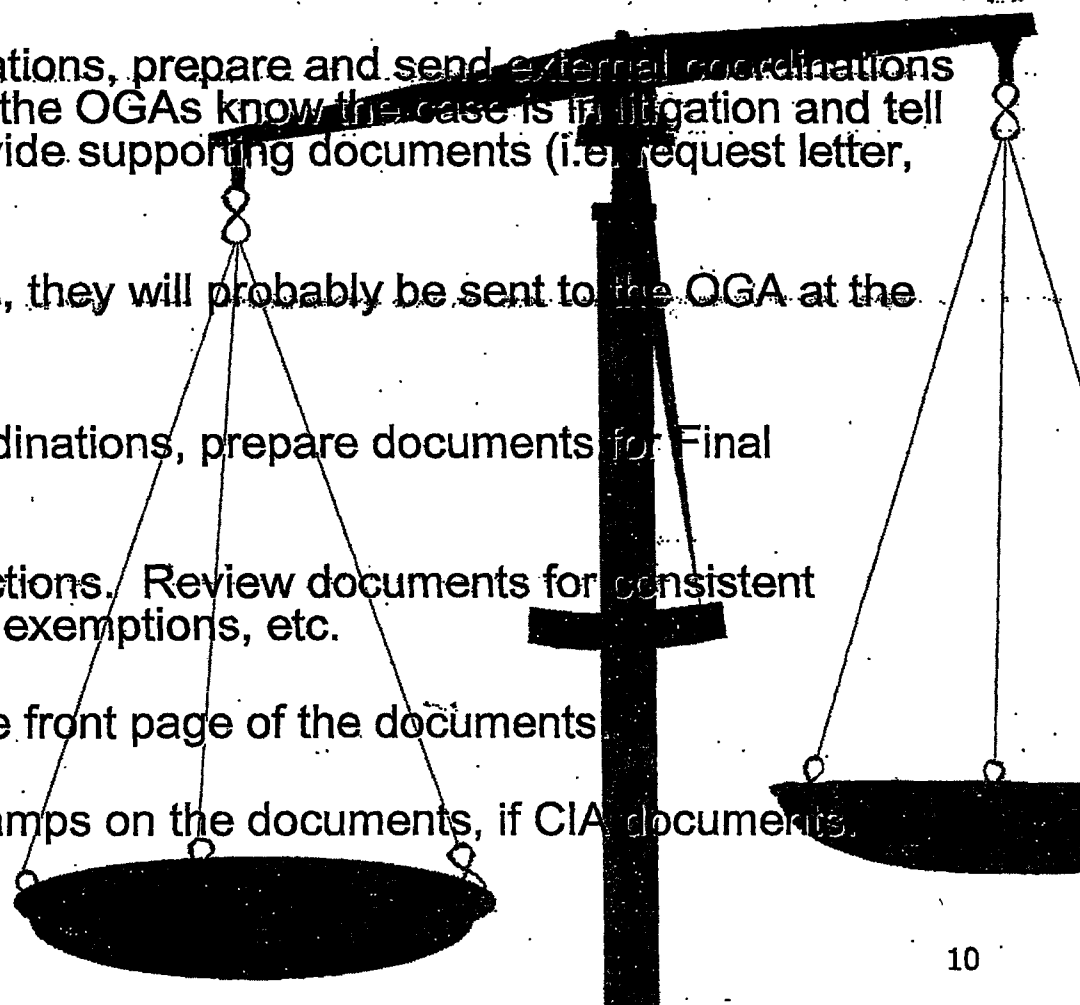


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PROCESS DOCUMENTS

- The processing is the same as in regular FOIA cases.
- If there are external coordinations, prepare and send external coordinations to OGAs. Inform OGC. Let the OGAs know the case is in litigation and tell them of any deadlines. Provide supporting documents (i.e. request letter, court order).
- If there are external referrals, they will probably be sent to the OGA at the time of the Final Response.
- If there are no external coordinations, prepare documents for Final Response.
- Merge all components redactions. Review documents for consistent redactions, neat redactions, exemptions, etc.
- Check for exemptions on the front page of the documents.
- Put approved for release stamps on the documents, if CIA documents.
- Burn the documents.



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FINAL DOCUMENT COORDINATION WITH OGC

- OGC will usually want to review the documents. Coordinate with them to see if they want tinted, redacted, or something else.
- OGC may ask some questions that will require talking to the components that reviewed the docs e.g. why was something redacted, is this really a b5? etc.
- They may want you to tell the components to re-review and see if they can release more or segregate the information instead of denying in full.
- They may ask the components to justify their withholdings.

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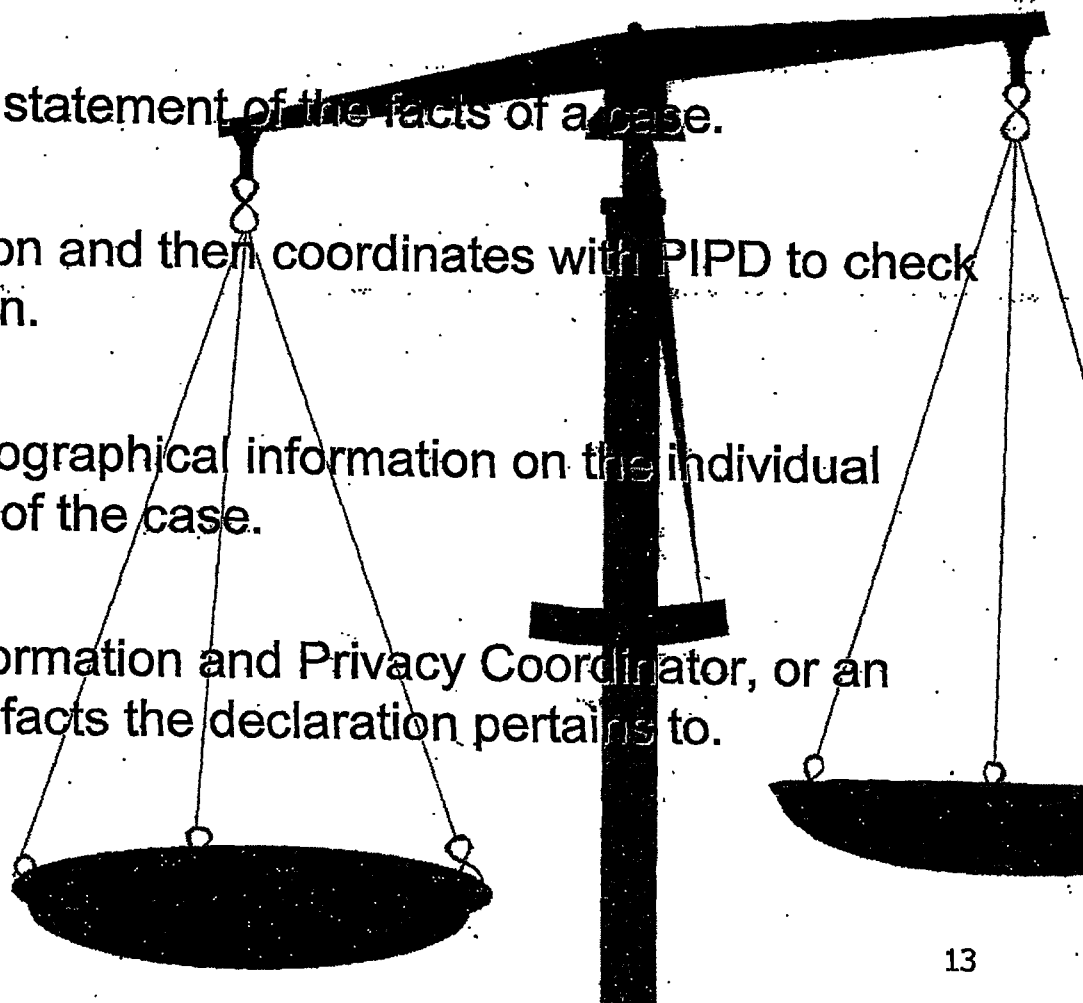
FINAL RESPONSE SENT TO REQUESTER

- Prepare final letter in consultation with OGC/LD and CIO/Legal.
- OGC will determine when the final response should be sent.
- Sometimes the response is sent coincidentally with a declaration or motion for summary judgment.
- Double check the requester's address if significant amount of time has passed. (Check recent correspondence, ask OGC).
- Occasionally you will be facing a deadline and you will need to take the response to the post office.

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PREPARING DECLARATION AND/OR VAUGHN INDEX

- A declaration is a written statement of the facts of a case.
- OGC writes the declaration and then coordinates with PIPD to check the facts in the declaration.
- Consists of two parts - Biographical information on the individual signing it and a synopsis of the case.
- Usually signed by the Information and Privacy Coordinator, or an IRO depending on which facts the declaration pertains to.



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VAUGHN INDEX

- A Vaughn index is an itemized index of each document. It describes the specific FOIA exemption(s) upon which the Agency is relying to withhold each document or portion thereof and the justification for the nondisclosure.
- If there are no documents, a Vaughn index is not needed. Even if documents are involved, a Vaughn index is not always required. OGC will advise if a Vaughn index is necessary. In most litigations involving documents, a Vaughn index is required.
- The index will provide information in sufficient detail to permit the requesting party to argue effectively against the claimed exemptions and for the court to assess the applicability of the claimed exemptions.
- OGC creates the Vaughn index with input from the Case Manager and IROs.

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TRULOCK VAUGHN INDEX

FOIA Request No.:

Document Number: J

Date of Document: 07/06/2000

Document Type: Report

Classification: Secret

From/To: Withheld

Subject: Withheld

Document Pages: 2

FOIA Exemptions:



Privacy Act Exemptions:



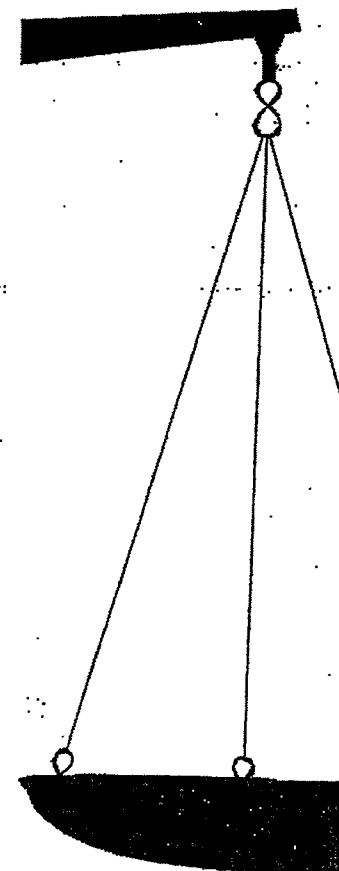
Discussions:



Document Description: This two-page report is a summary of particular Agency activities. It includes information pertaining to intelligence methods and it is withheld in full to protect such methods from disclosure. Furthermore, the document includes information on CIA internal organizational data and employee names. Disclosure of this information would also reveal information currently and properly classified at the SECRET level. This document is denied in its entirety because no meaningful information can be segregated for release.

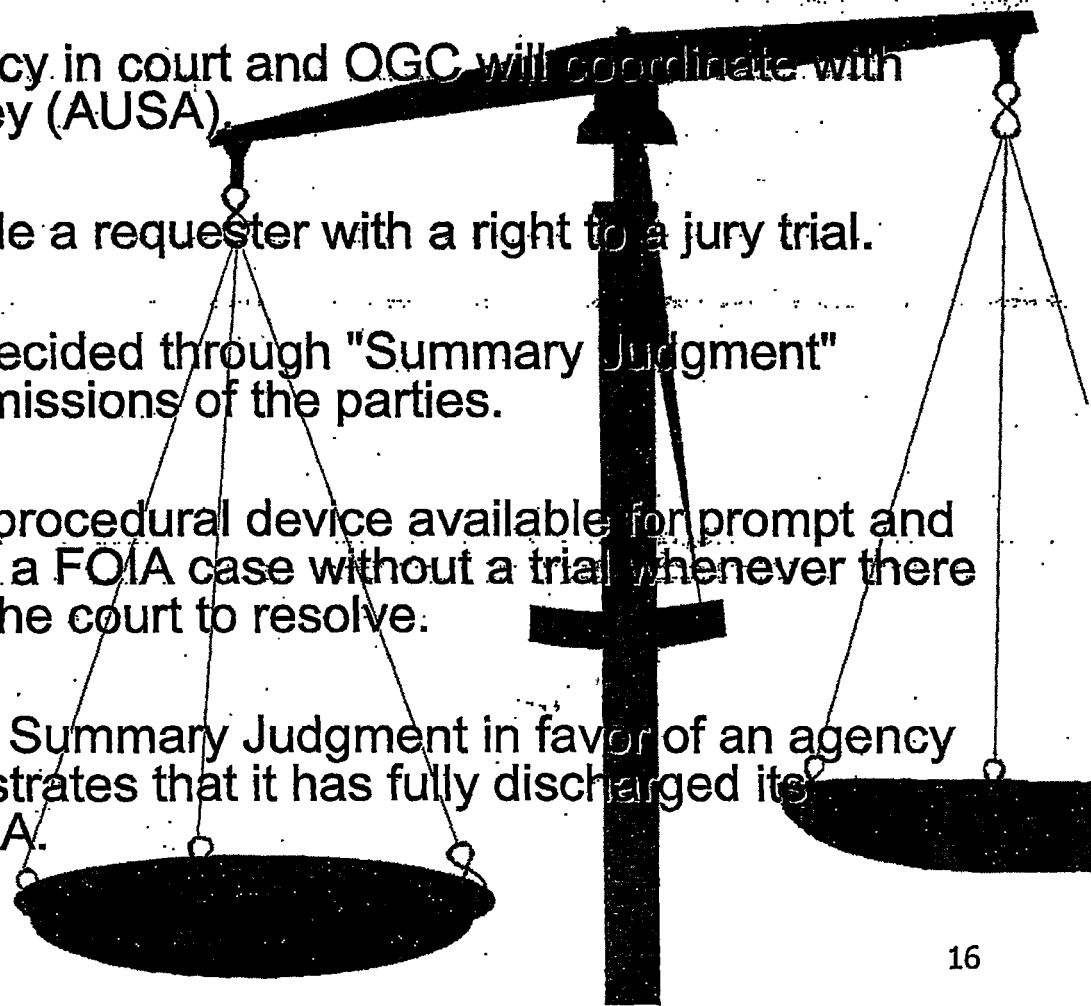
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Case Number: 1000002204
Judge's Initials: EGS



COURT DECISION

- DOJ represents the Agency in court and OGC will coordinate with the Assistant U.S. Attorney (AUSA).
- The FOIA does not provide a requester with a right to a jury trial.
- Most FOIA lawsuits are decided through "Summary Judgment" based on the written submissions of the parties.
- Summary Judgment is a procedural device available for prompt and expeditious disposition of a FOIA case without a trial whenever there are no factual issues for the court to resolve.
- Judges are likely to grant Summary Judgment in favor of an agency when the agency demonstrates that it has fully discharged its obligations under the FOIA.

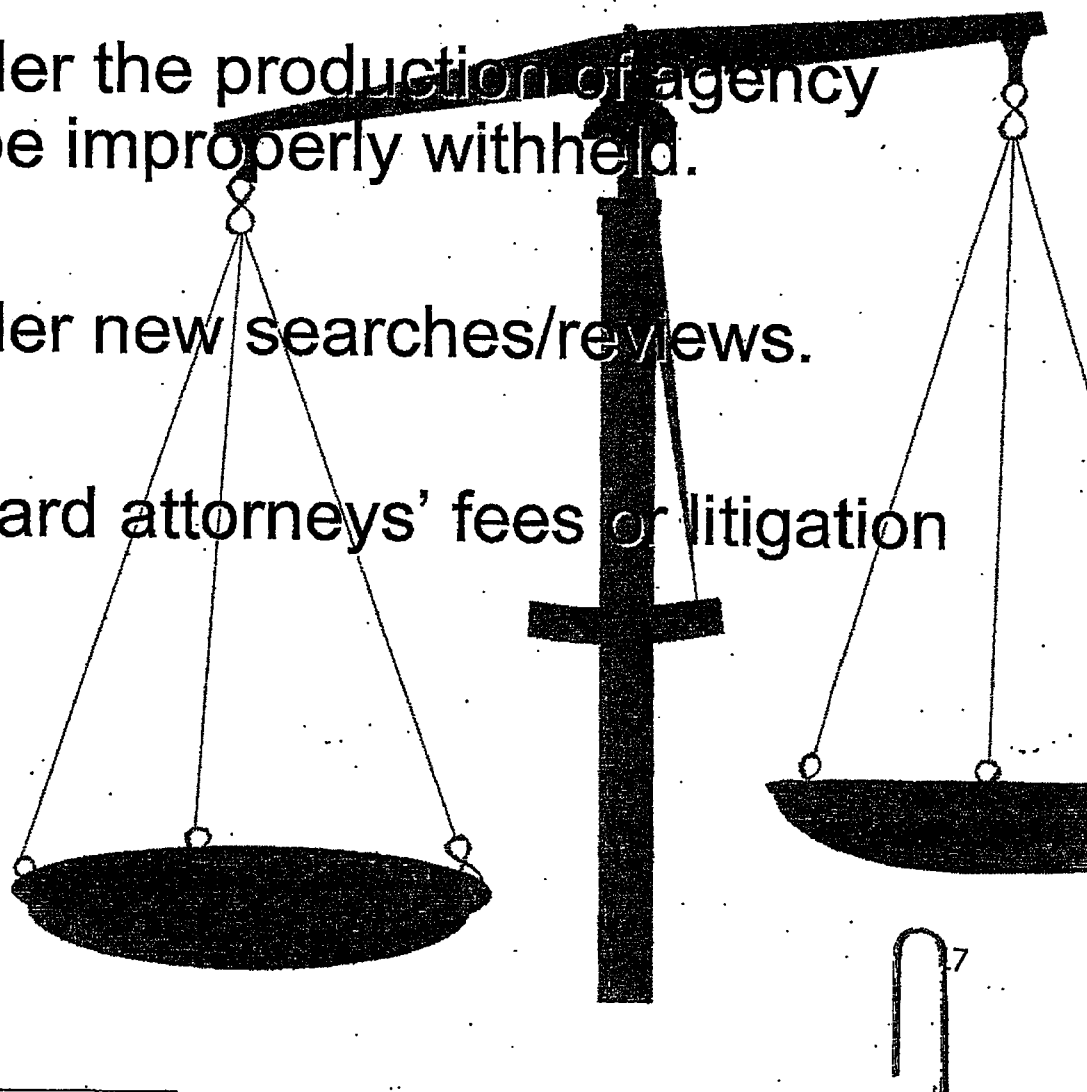


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WHAT HAPPENS IF WE LOSE

- The court may order the production of agency records found to be improperly withheld.
- The court may order new searches/reviews.
- The court may award attorneys' fees or litigation costs.



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WHAT HAPPENS IF WE WIN

POP OPEN THE CHAMPAGNE!

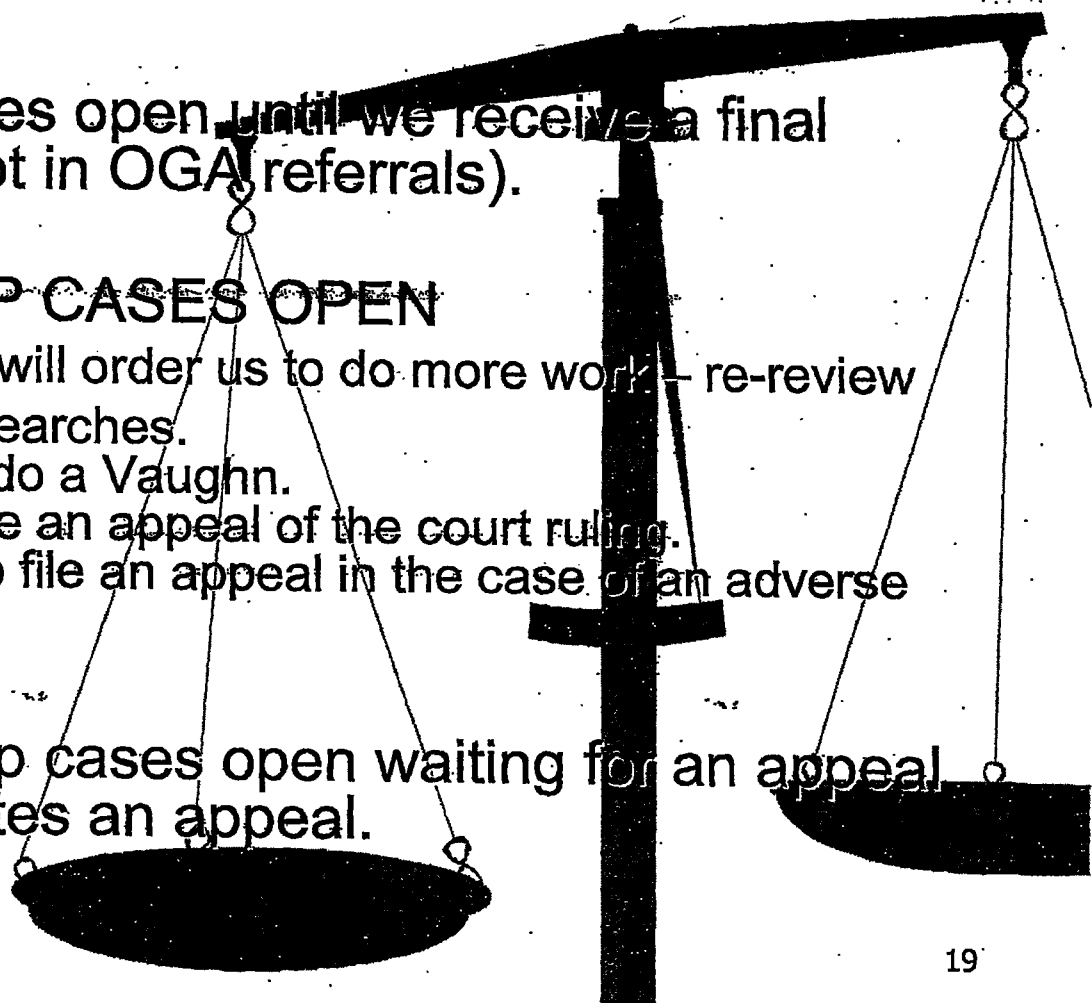
IT'S PARTY TIME!

(ENOUGH PARTYING, NOW GO DO A FINAL!)

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CASE CLOSURE

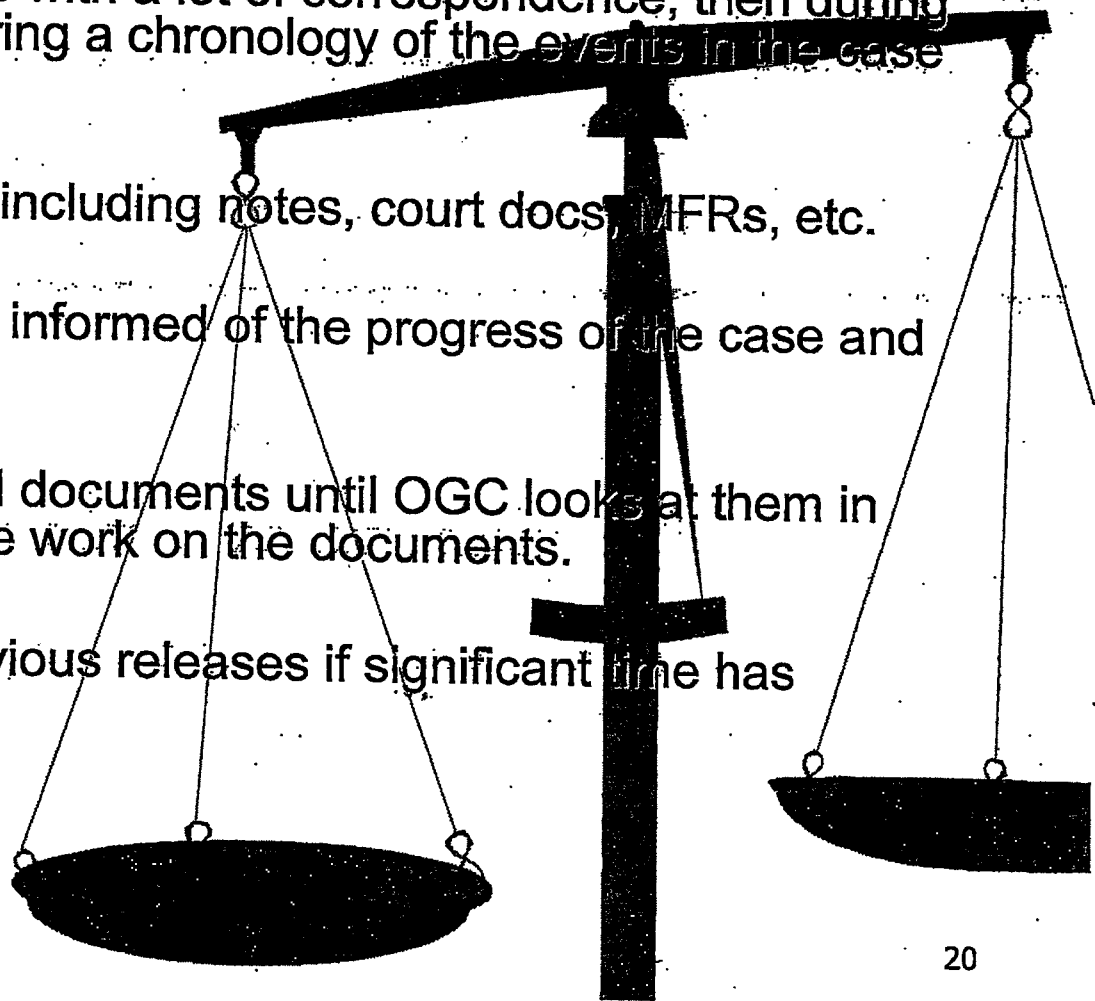
- Await notification from OGC.
- We usually keep cases open until we receive a final court decision (except in OGA referrals).
- **REASONS WE KEEP CASES OPEN**
 - Sometimes the judge will order us to do more work – re-review documents or more searches.
 - We may still need to do a Vaughn.
 - The requester may file an appeal of the court ruling.
 - The Agency may also file an appeal in the case of an adverse decision.
- We don't usually keep cases open waiting for an appeal unless OGC anticipates an appeal.



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HELPFUL HINTS

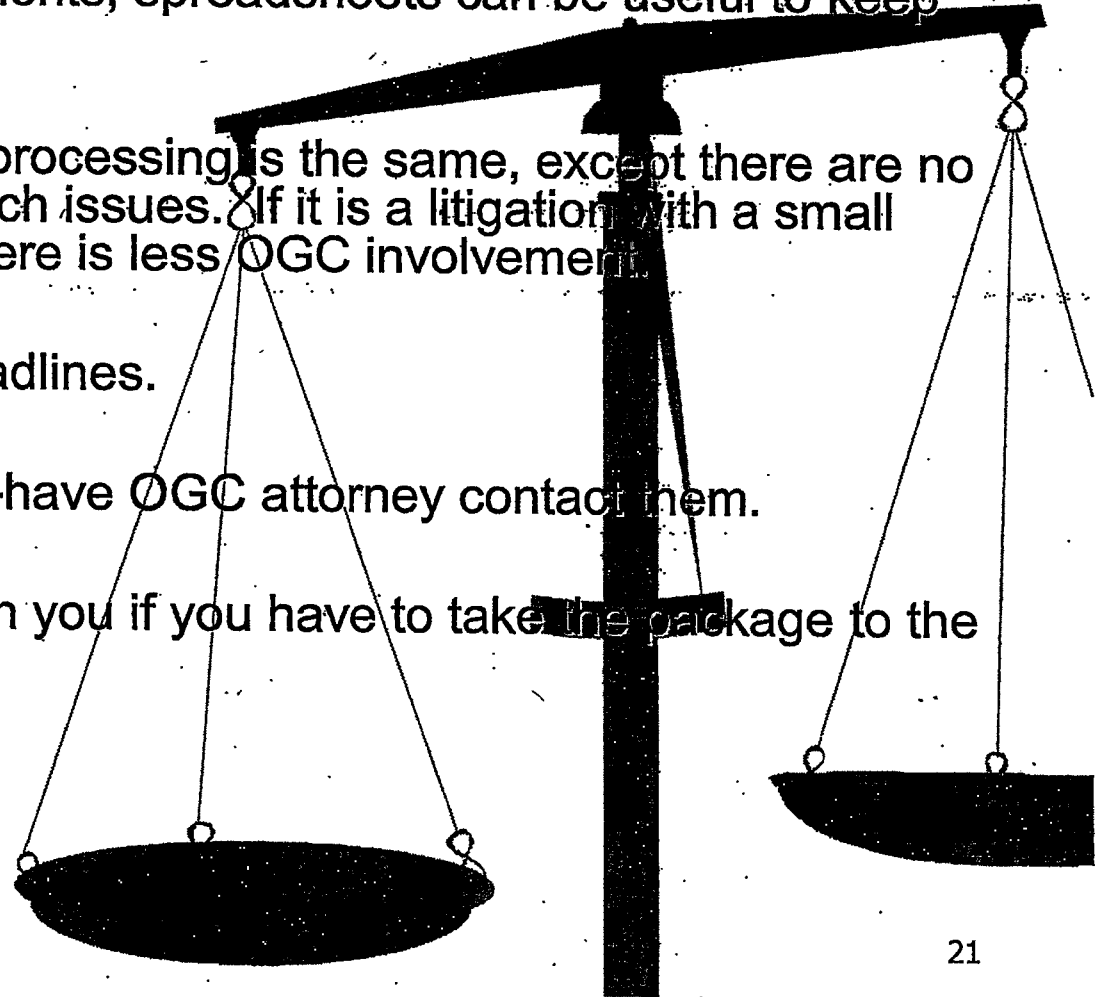
- If the case is a large case with a lot of correspondence, then during your initial review, preparing a chronology of the events in the case might help.
- Get everything scanned, including notes, court docs, MFRs, etc.
- Keep FOIA management informed of the progress of the case and especially, deadlines.
- Don't approve the burned documents until OGC looks at them in case you have to do more work on the documents.
- Recheck CADRE for previous releases if significant time has passed.



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HELPFUL HINTS

- If there are a lot of documents, spreadsheets can be useful to keep track of the documents.
- In an OGA litigation, the processing is the same, except there are no search taskings and search issues. If it is a litigation with a small amount of documents, there is less OGC involvement.
- Be prepared for short deadlines.
- Do not contact requester-have OGC attorney contact them.
- Have your credit card with you if you have to take the package to the post office.



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